

Title 28. Insurance
Part 1. Texas Department of Insurance
Chapter 5. Property and Casualty Insurance
Subchapter E. Texas Windstorm Insurance Association
Division 3. Loss Funding, Including Catastrophe Reserve Trust Fund, Financing
Arrangements, and Public Securities

§5.4101. Applicability.

(a) This section and §§[Sections 5.4101,] 5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4127 [5.4123—5.4128], 5.4133 - 5.4136, and 5.4141 - 5.4145 [5.4149] (relating to
- Definitions.
- Operation of the Catastrophe Reserve Trust Fund.
- Termination of the Catastrophe Reserve Trust Fund.
- Investments of Catastrophe Reserve Trust Fund.
- Duties and Responsibilities.
- Financing Arrangements.
- Public Securities Request, Approval, and Issuance.
- Issuance of Class 1 Public Securities before a Catastrophic Event.
- Issuance of Public Securities after a Catastrophic Event.
- Contingent Sources of Repayment for Class 2 and Class 3 Public Securities; Public
Security Proceeds.
- Excess Public Security Proceeds
- Marketable Public Securities.
- Amount of Class 1 Public Securities that Cannot be Issued.
- Market Conditions and Requirements; and Cost-Benefit Analysis.
- Association Rate Filings.
- Class 1 Public Securities Trust Fund.
- Class 2 and Class 3 Public Securities Trust Funds.

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1 - Premium Surcharge Trust Fund.

2 - Excess Premium Surcharge Revenue.

3 - Excess Net Premium and Other Revenue.)

4 of this division are a part of the Texas Windstorm Insurance Association's plan of operation and
5 will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of
6 Operation). If a court of competent jurisdiction holds that any provision of this division is
7 inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the
8 remaining provisions of the sections in this division will remain in effect.

9 (b) Notwithstanding any provision in this subchapter, the department retains regulatory
10 oversight of the association as required by Insurance Code Chapter 2210, including periodic
11 examinations of the accounts, books, and records of the association, and no provision in this
12 subchapter should be interpreted as negating or limiting the department regulatory oversight of
13 the association.

14
15 **§5.4102. Definitions.**

16 The following words and terms when used in this division will have the following meanings
17 unless the context clearly indicates otherwise:

18 (1) Association--Texas Windstorm Insurance Association.

19 (2) Association program--The funding of any or all of the purposes authorized to
20 be funded with the Public Securities under Insurance Code Chapter 2210, Subchapter M.

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(3) Association surcharge--premium surcharges on policyholders of association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131.

(4) Association surcharge percentage--The percentage amount determined by the commissioner under §5.4127(c) or (d) of this division (relating to Determination of the Association Surcharge Percentage).

(5) Authorized representative of the department--Any officer or employee of the department, empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the commissioner.

(6) ~~[(4)]~~ Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.

(7) ~~[(5)]~~ Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.

(8) ~~[(6)]~~ Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the commissioner under Insurance Code §2210.005.

(9) ~~[(7)]~~ CRTF--Catastrophe Reserve Trust Fund. A statutorily created ~~[statutorily created]~~ trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.

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1 (10) ~~[(8)]~~ Catastrophic event--An occurrence or a series of occurrences in a
2 catastrophe area resulting in insured losses and operating expenses of the association in excess of
3 premium and other revenue of the association.

4 (11) ~~[(9)]~~ Catastrophic losses--Losses resulting from a catastrophic event.

5 (12) ~~[(10)]~~ Class 1 payment obligation--The contractual amount of net premium
6 and other revenue and association surcharges that the association must deposit in the class 1
7 public security trust fund ~~[obligation revenue fund]~~ at specified periods for the payment of class
8 1 public security obligations, public security administrative expenses, and contractual coverage
9 amount as required by class 1 public security agreements.

10 (13) Class 2 payment obligation--The contractual amount of net premium and
11 other revenue and association surcharges that the association must deposit in the class 2 public
12 security trust fund at specified periods for the payment of class 2 public security obligations,
13 public security administrative expenses, and contractual coverage amount as required by class 2
14 public security agreements.

15 (14) Class 3 payment obligation--The contractual amount of net premium and
16 other revenue and association surcharges that the association must deposit in the class 3 public
17 security trust fund at specified periods for the payment of class 3 public security obligations,
18 public security administrative expenses, and contractual coverage amount as required by class 3
19 public security agreements.

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(15) ~~(14)~~ Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.

(16) ~~(12)~~ Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.

(17) ~~(13)~~ Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 ~~§2210.074~~ and Insurance Code Chapter 2210, Subchapter M.

(18) ~~(14)~~ Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.

(19) ~~(15)~~ Commissioner--The Commissioner of Insurance of the State of Texas.

(20) ~~(16)~~ Comptroller--The Comptroller of the State of Texas.

(21) ~~(17)~~ Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and which may be necessary as provided under Insurance Code §2210.6132.

(22) Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security trust ~~[obligation revenue]~~ fund or [] premium surcharge trust fund, ~~[or member assessment trust fund]~~ as security for the payment of debt service on the public securities, administrative expenses on

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public securities, or other payments the association must pay in connection with public securities.

(23) [(48)] Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may issue as authorized under Insurance Code Chapter 2210, Subchapter M.

(24) [(49)] Department--The Texas Department of Insurance.

(25) [(20)] Earned premium--That portion of gross premium that the association has earned because of the [expired] portion of [the] time during which [for which] the insurance policy has been in effect.

(26) [(24)] Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.

(27) [(22)] Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.

(28) Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.

(29) [(23)] Investment income--Income from the investment of funds.

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1 (30) ~~[(24)]~~ Letter of instruction--The commissioner's or authorized department
2 representative's signed written authorization and direction to an authorized representative of the
3 trust company.

4 (31) ~~[(25)]~~ Losses--Amounts paid or expected to be paid on association insurance
5 policy claims, including adjustment expenses, litigation expenses, other claims expenses, and
6 other amounts that are incurred in resolving a claim for indemnification under an association
7 insurance policy.

8 ~~[(26) Member assessment trust fund--A dedicated trust fund established by TPFA~~
9 ~~and held by the trust company in which the association or assessed insurers must deposit member~~
10 ~~assessments collected under Insurance Code §2210.613 and §2210.6135. The member~~
11 ~~assessment trust fund may be segregated into separate funds, accounts, or subaccounts, including~~
12 ~~for the purpose of segregating class 2 and class 3 public security member assessments.--]~~

13 (32) ~~[(27)]~~ Net gain from operations--Net income reported during a calendar year
14 equal to the amount of all earned premium, other revenue of the association, and distributions of
15 excess net premium and other revenue ~~[revenues]~~ from the class 1, class 2, and class 3 public
16 security trust funds ~~[obligation revenue fund and the repayment obligation trust fund]~~ that are in
17 excess of: incurred losses;[;] operating expenses;[;] reinsurance premium;[;] current year
18 financial arrangement obligations;[;] current year ~~[class 1]~~ net premium payment obligations;[;]
19 and current year public security administrative expenses ~~[, and premium surcharge and member~~
20 ~~assessment repayment obligations].~~

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1 (33) Net investment income--investment income less associated fees and
2 expenses charged by the trust company, or others, for managing or investing the assets.

3 (34) [(28)] Net premium--Gross premium less unearned premium. Following the
4 issuance of public securities, net premium may be [is] pledged for the payment of class 1, class
5 2, and class 3 payment obligations [obligation].

6 (35) Net premium payment obligations--Public security obligations that are paid
7 from net premium and other revenue for public securities repayable under Insurance Code
8 §§2210.612, 2210.613, and 2210.6131. The term does not include public security obligations
9 that are paid from association surcharges.

10 (36) [(29)] Net revenues--Net premium plus other revenue, less scheduled policy
11 claims, less budgeted operating expenses, less net premium [class 1] payment obligations
12 [obligation] for that calendar year, [less premium surcharge and member assessment repayment
13 obligation for that calendar year, and] less amounts necessary to fund or replenish any operating
14 reserve fund.

15 ~~[(30) Obligation revenue fund--The dedicated trust fund established by TPFA and~~
16 ~~held by the trust company in which the association must deposit net premium and other revenue~~
17 ~~for the payment of class 1 payment obligation.]~~

18 (37) [(31)] Operating reserve fund--Association or trust company held fund for
19 the payment of budgeted scheduled policy claims and budgeted operating expenses.

20 (38) [(32)] Other revenue--Revenue of the association from any source other than
21 premium. Other revenue includes investment income on association assets. Other revenue does

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not include premium surcharges [~~and member assessments~~] collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 [~~2210.6135 and 2210.6136~~] or member assessments collected under Insurance Code §§2210.0725, 2210.074, or 2210.0742, and interest income on those amounts.

(39) [~~(33)~~] Plan of operation--The association's plan of operation as adopted by the commissioner under Insurance Code §2210.151 and §2210.152.

(40) [~~(34)~~] Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, and 2210.6132[~~2210.6136~~].

~~[(35) Premium surcharge and member assessment repayment obligation--The amount of premium surcharge and member assessment that the commissioner has ordered the association to repay over a specified number of years under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities). This may involve varying periodic payments equaling the total required repayment amount.]~~

(41) [~~(36)~~] Premium surcharge trust fund(s)--The dedicated trust fund or funds established by TPFA and held by the trust company in which the association or insurers must deposit contingent [~~premium~~] surcharges [~~collected under Insurance Code §2210.613~~]. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges.

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1 (42) ~~[(37)]~~ Public securities--Collective reference to class 1 public securities,
2 class 2 public securities, and class 3 public securities.

3 (43) ~~[(38)]~~ Public security administrative expenses--Expenses incurred by the
4 association, TPFA, or TPFA consultants to administer public securities issued under Insurance
5 Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys,
6 and other professional services.

7 (44) ~~[(39)]~~ Public security obligations--The principal of a public security and any
8 premium and interest on a public security issued under Insurance Code Chapter 2210,
9 Subchapter M, together with any amount owed under a related credit agreement.

10 ~~[(40) Repayment obligation trust fund--The dedicated trust fund into which the~~
11 ~~association deposits, in amounts necessary to comply with the commissioner's order under~~
12 ~~§5.4126 of this division for payment of the premium surcharge and member assessment~~
13 ~~repayment obligation, net premium and other revenue that is not contractually required for the~~
14 ~~class 1 payment obligation.]~~

15 (45) ~~[(41)]~~ Scheduled policy claims--That portion of the association's earned
16 premium and other revenue expected to be paid in connection with the disposition of losses that
17 do not result from a catastrophic event.

18 (46) ~~[(42)]~~ Trust company--The Texas Treasury Safekeeping Trust Company
19 managed by the comptroller under Government Code §404.101, et seq.

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(47) [(43)] Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.

(48) [(44)] TPFA—The Texas Public Finance Authority.

(49) [(45)] Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4111. Operation of the Catastrophe Reserve Trust Fund.

--NO CHANGE--

§5.4112. Termination of Catastrophe Reserve Trust Fund.

--NO CHANGE--

§5.4113. Investments of Catastrophe Reserve Trust Fund.

--NO CHANGE--

§5.4114. Duties and Responsibilities.

--NO CHANGE--

§5.4121. Financing Arrangements.

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(a) The association may enter into financing arrangements. The financing arrangement must:

(1) enable the association to:

(A) pay losses under Insurance Code §2210.072, or

(B) obtain public securities under Insurance Code §2210.072; and

(2) be approved by the association's board of directors before the association enters into the financing arrangement.

(b) The association may pay a financing arrangement with any or all:

(1) net premium and other revenue of the association that is not required for payment of class 1, class 2, or class 3 payment obligations [~~or premium surcharge and member assessment repayment obligations~~];

(2) reinsurance proceeds;

(3) the proceeds of any financing arrangement;

(4) the proceeds of any class of public security issued under Insurance Code Chapter 2210; or

(5) any other association asset.

(c) As collateral security for such financial arrangements, including interest-bearing [~~interest-bearing~~] loans or other financial instruments, the association may grant in favor of the applicable market source a collateral assignment and security interest in and to all or any portion of the association's assets, including without limitation, all or any portion of the association's

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right, title, and interest in and to all proceeds of any class of public security issued under Insurance Code Chapter 2210.

§5.4123. Public Securities Request, Approval, and Issuance.

(a) The association's board of directors must request the issuance of public securities as prescribed in §5.4124 and §5.4125 [~~§§5.4124—5.4126~~] of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event and [~~;~~] Issuance of Public Securities after a Catastrophic Event [~~;~~ and Alternative for Issuing Class 2 and Class 3 Public Securities]).

(1) The request must be submitted to the commissioner for approval with all required supporting documentation prescribed in §5.4124 and §5.4125 [~~§§5.4124—5.4126~~] of this division.

(2) The association's board of directors may request public securities as often as necessary.

(3) If multiple classes of public securities are combined into a single request, the request must separately identify and provide supporting documentation for the issuance of each class of public securities.

(4) The association's board of directors may at any time submit a request for issuance of public securities to be issued after a catastrophic event [~~at any time~~]. If the request for the issuance of public securities after a catastrophic event is submitted before a catastrophic event, the association's request must specify that the requested public securities may only be issued after a catastrophic event.

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(b) The commissioner must approve the request before TPFA may issue the requested public securities.

(1) If the supporting documentation is incomplete, the commissioner or the department may request additional documentation without rejecting the request.

(2) In considering the association's request, the commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, reinsurance proceeds, and any other related or supporting information from any source, including from the general manager of the association and from TPFA and its consultants and legal counsel.

(3) If the commissioner disapproves the request, the association's board of directors may reconsider the matter and submit another request under subsection (a) of this section.

(4) The department must provide the commissioner's written approval of the request to the association and TPFA.

(c) Following the commissioner's written approval of the request, TPFA may issue public securities and credit agreements on behalf of the association, as authorized in Insurance Code Chapter 2210 and §5.4124 and §5.4125 [~~§§5.4124—5.4126~~] of this division, for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.

(d) The association must provide to the department and the commissioner any requested information concerning public securities or the pending issuance of public securities, including information TPFA, a TPFA consultant, or TPFA legal counsel provides to the association.

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(e) A request for issuance of public securities under subsection (a) of this section includes a request for the reissuance and refinancing of public security obligations.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.

(a) The association's board of directors may request that TPFA issue class 1 public securities before a catastrophic event, if the association's board of directors determines that class 1 public security proceeds may become necessary and the commissioner approves the request.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) the reason why the requested class 1 public securities may become necessary;

(2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;

(3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;

(4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any contractual coverage amount and public security administrative expenses;

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(7) the structure and terms of the public securities, including any terms that may change as a result of a catastrophic event or the use of any proceeds of class 1 public securities issued before a catastrophic event;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);

(10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flows, reflecting the financial impact of issuing class 1 public securities before a catastrophic event that assumes the proceeds will be used in the event of a catastrophe; and

(11) any other relevant information requested by the commissioner.

(c) The association may make one or more requests under this section.

(d) The association may request class 1 public securities up to an aggregate principal amount not to exceed \$500 million [~~\$1 billion~~] outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that class 1 public securities that are issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, and that have been used to pay for insured losses or expenses will not continue to count against the combined \$500 million [~~\$1 billion~~] limit described in this subsection. This section does not authorize the association to request class 1

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public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).

§5.4125. Issuance of Public Securities after a Catastrophic Event.

(a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request that TPFA issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:

(1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed available money in the CRTF [~~and available reinsurance proceeds, and that the public security proceeds are necessary to fund the catastrophic losses~~]; or

(2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses. This paragraph does not affect the requirements for issuing public securities that are issued after a catastrophic event or the use of proceeds from public securities issued after a catastrophic event.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) an estimate of the actual or potential losses and expenses from the catastrophic event;

(2) the association's current premium and other revenue;

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(3) the association's current net revenues;

(4) the sources and amount of loss funding other than public securities, including:

(A) the amount of the loss paid from premium and other revenue;

(B) the amount requested from the CRTF; and

(C) amounts available from other financing arrangements and the

association's obligations for other financing arrangements, including whether the amounts must be repaid from public security proceeds or from other means; ~~and~~

~~[(D) available reinsurance proceeds;]~~

(5) the principal amount of each requested class of public securities that is

authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public

securities under this section, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and terms of the public securities;

(8) market conditions and requirements necessary to sell marketable public

securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to

Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued;

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(10) any other relevant information requested by the commissioner.

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(c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event), including the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, that were available for a catastrophic event at the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or

(2) the amount of the estimated loss payable from proceeds of that particular class, and estimated costs including the costs associated with the issuance of that class of public security.

(d) The association must ~~[request]~~, in aggregate for each catastrophe year:

(1) Impose an assessment of the statutorily authorized ~~[principal]~~ amount of class 1 assessments under Insurance Code §2210.0725 and §5.4161 of this division (relating to Member Assessments) ~~[public securities]~~ before class 2 public securities may be issued ~~[requested]~~; and

(2) Impose an assessment of the statutorily authorized amount of class 2 assessments under Insurance Code §2210.074 and §5.4161 of this division before class 3 public

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securities may be issued ~~[the statutorily authorized principal amount of class 2 public securities before class 3 public securities may be requested].~~

(e) The association:

(1) may make one or more requests under this section;

(2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015;

(3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, before using the proceeds of class 1 public securities requested under this section; and

(4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 assessments, respectively ~~[public security proceeds]~~.

§5.4126. Determination of the Association Surcharge Percentage.

(a) While class 1, class 2, or class 3 public securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively, are outstanding, at least quarterly, the association must determine if its net premium and other revenue is sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and 2210.6131. If the association, after

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1 consultation with TPFA, determines that net premium and other revenue are not sufficient to pay
2 the securities, the association must promptly submit a request to the commissioner to approve an
3 association surcharge.

4 (b) A request described by subsection (a) of this section must include the following
5 information for each class of public securities for which an association surcharge is required:

6 (1) the proposed association surcharge percentage;

7 (2) the amount the association has determined, after consultation with TPFA, is
8 the debt service and all related expenses on the public securities for the applicable period;

9 (3) the amount that the association has determined is the debt service not already
10 covered by available funds and all related expenses on the public securities for the applicable
11 period;

12 (4) for policies that comply with the requirements of §5.49112 of Division 10 of
13 this subchapter, the association's best estimate of its anticipated gross premium for policies in
14 effect on the date described by paragraph (8) of this subsection;

15 (5) for policies that do not yet comply with the requirements of §5.49112 of
16 Division 10 of this subchapter, the association's best estimate of its anticipated gross premium
17 for the period described by paragraphs (9) and (10) of this section;

18 (6) all relevant data the association relied upon when determining the amounts in
19 paragraphs (2) - (5) of this subsection;

20 (7) an explanation of the methodology, including all material assumptions, the
21 association used to determine the amounts in paragraphs (2) - (5) of this subsection;

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1 (8) the date, which must be no more than 90 days after the date the request is
2 received by the commissioner, on which the association surcharge applies to policies that are in
3 force and compliant with §5.49112 (relating to Filing and Issuance of Policy Forms Relating to
4 Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131) of Division
5 10 of this subchapter;

6 (9) the date on which the association surcharge begins to apply to policies not
7 compliant with §5.49112 of Division 10 of this subchapter, which must be the same date as the
8 date in paragraph (8) of this subsection; and

9 (10) the date on which the association surcharge ceases to apply to policies not
10 compliant with §5.49112 of Division 10 of this subchapter, which must be the day after the date
11 the last noncompliant policy expires.

12 (c) The commissioner will, within 10 business days of receipt of the request in
13 subsection (b), notify the association and TPFA of the commissioner's determination on the
14 sufficiency of the association surcharge percentage requested. The association must implement
15 the surcharge percentage the commissioner determines is sufficient.

16 (d) If the commissioner independently determines that net premium and other revenue
17 are not sufficient to pay for securities payable under Insurance Code §§2210.612, 2210.613, and
18 2210.6131, the commissioner may order the association to assess an association surcharge.

19
20 **~~§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities.~~**

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1 ~~[(a) If all or any portion of the authorized principal amount of class 1 public securities~~
2 ~~requested under §5.4125 of this division (relating to Issuance of Public Securities after a~~
3 ~~Catastrophic Event) cannot be issued based on the factors described in §5.4135 of this division~~
4 ~~(relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be~~
5 ~~Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the commissioner~~
6 ~~may order the issuance of class 2 and class 3 public securities as provided in this section.]~~

7 ~~[(b) In its request to the commissioner to order issuance of public securities under this~~
8 ~~section, the association must submit the following information:~~

- 9 ~~(1) the information required by §5.4125(b) of this division; and~~
10 ~~(2) information based on the analyses described in §5.4135 of this division;~~
11 ~~(3) the amount of class 1 public securities that can be issued;~~
12 ~~(4) the amount of class 1 public securities that cannot be issued; and~~
13 ~~(5) the specific reasons, market conditions, and requirements that prevent TPFA~~
14 ~~from issuing all or any portion of the authorized principal amount of class 1 public securities.~~
15 ~~The association may rely on information and advice provided by TPFA, TPFA consultants,~~
16 ~~TPFA legal counsel, and third parties retained by the association for this purpose.]~~

17 ~~[(c) The association must request that TPFA issue the authorized principal amount of~~
18 ~~class 1 public securities that can be issued under §5.4125(c) of this division before class 2 public~~
19 ~~securities may be issued under this section.]~~

20 ~~[(d) The commissioner may rely on information provided to the commissioner under this~~
21 ~~section, §5.4125 of this division, and from any other source, including information and advice~~

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~~provided by the association, TPFA, TPFA consultants, and TPFA legal counsel. If the commissioner finds that all or any portion of the authorized amount of class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 public securities in an amount that does not exceed the authorized principal amount of class 2 public securities as determined in §5.4125(c) of this division.]~~

~~[(e) An order of the commissioner issued under subsection (d) of this section must specify:~~

~~(1) the maximum principal amount of class 2 public securities that are to be issued;~~

~~(2) the information and amount required under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments);~~

~~(3) the maximum term of the class 2 public securities;~~

~~(4) when the association is to begin collecting funds under this section for deposit in the repayment obligation trust fund;~~

~~(5) the premium surcharge and member assessment repayment obligation; and~~

~~(6) the year repayment begins under §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers).]~~

~~[(f) The commissioner may revise an order issued under this section as necessary if the association prepays amounts due or to maintain the association's ability to fund the class 1 payment obligations or other association obligations, including losses.]~~

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~~[(g) TPFA may issue the class 2 public securities authorized by the commissioner's order under this section. TPFA may issue the class 2 public securities that are subject to §5.4127(b) of this division as a separate series from other class 2 public securities.]~~

~~[(h) If class 2 public securities are issued in the manner authorized under this section, class 3 public securities may be issued only after class 2 public securities have been issued in the statutorily authorized principal amount of \$1 billion for that catastrophe year. Despite the restriction on issuing class 3 public securities in this subsection, the association may request, the commissioner may approve, and TPFA may prepare for the issuance of class 3 public securities before the issuance of all class 2 public securities. Class 3 public securities must be requested as provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and §5.4125 of this division.]~~

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities.

(a) To obtain approval for the issuance of class 2 or class 3 public securities paid from contingent surcharges, the association must first submit a written request to the commissioner.

(b) In its request to the commissioner under subsection (a) of this section, the association must include:

(1) a determination from TPFA that TPFA is unable to issue class 2 or class 3 public securities paid as provided by Insurance Code §2210.613 or §2210.6131, as applicable; or

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(2) the amount of debt service required for public securities paid as provided by Insurance Code §2210.613 or §2210.6131, and the association's best estimate of the association surcharges needed to pay the required debt service.

(c) The commissioner, after consultation with TPFA, may order that class 2 or class 3 public securities be paid as provided by Insurance Code §2210.6132 if either:

(1) TPFA is unable to issue public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable; or

(2) the issuance of public securities payable under Insurance Code §2210.613 or §2210.6131, as applicable, is financially unreasonable for the association.

~~§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments.~~

~~[(a) All public security obligations and public security administrative expenses for class 2 public securities issued under §5.4126 of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) must be paid 30 percent from member assessments and 70 percent from premium surcharges on those catastrophe area insurance policies subject to premium surcharge under Insurance Code §2210.613.~~

~~(1) For purposes of the premium surcharge, in this section and §5.4128 of this division (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers), the term "insurer" has the meaning that is defined in §5.4172 of this division (relating to Premium Surcharge Definitions).~~

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~~(2) The association must collect and deposit the member assessments and premium surcharges as directed in §§5.4143—5.4146 of this division (relating to Trust Funds for the Payment of Class 2 Public Securities; Excess Class 2 Premium Surcharge Revenue; Excess Class 2 Member Assessment Revenue; and Member Assessment Trust Fund for the Payment of Class 3 Public Securities).]~~

~~[(b) The commissioner's order described in §5.4126(d) and (e) of this division must require the association to repay the cost of the class 2 public securities issued under subsection-~~

~~(a) of this section in an amount equal to the lesser of:~~

~~(1) \$500 million total principal amount, plus any costs associated with that amount; or~~

~~(2) that portion of the total principal amount of class 1 public securities authorized to be issued as described in §5.4125 of this division (relating to Issuance of Public Securities after a Catastrophic Event) that cannot be issued, plus any costs associated with that portion.]~~

~~[(c) The association must repay the costs under subsection (b) of this section by repaying the amount of premium surcharges and member assessments that are paid, or payable, on the total principal amount, plus any costs and contractual coverage amount associated with that amount.]~~

~~[(d) The sources of funds for the repayment required under subsection (b) of this section include:~~

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~~(1) the association's net premium and other revenue that is not contractually pledged to class 1 payment obligations; and~~

~~(2) excess amounts released from the obligation revenue fund that are released as described in §5.4142 of this division (relating to Excess Obligation Revenue Fund Amounts).]~~

~~[(e) In addition to premium and other revenue amounts that the association must collect to pay for outstanding class 1 payment obligations, the association must collect premium and other revenue in an amount sufficient to repay the premium surcharge and member assessment repayment obligation owed under the commissioner's order in subsection (b) of this section.]~~

~~[(f) Using either or both of the following methods, the association must repay the amounts required under the commissioner's order in subsection (b) of this section.]~~

~~(1) To reduce the need for collecting premium surcharges and member assessments, the association may deposit funds described in subsection (d) of this section in the premium surcharge trust fund, member assessment trust fund, or both funds, before the collection of any premium surcharges or member assessments.~~

~~(2) The association may deposit funds described in subsection (d) of this section in the repayment obligation trust fund for repayment of class 2 premium surcharges and member assessments already collected.]~~

~~[(g) For each year in which the association owes funds to repay member assessments or premium surcharges used to pay debt service for public securities described under subsection (b) of this section, the association must record the following information:~~

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~~(1) the amount of premium surcharges the association owes to each insurer for that year; and~~

~~(2) the amount of member assessments the association owes to each insurer for that year.]~~

~~[(h) Despite any other requirement in this division, an insurer may pay on behalf of its policyholder all or any part of a premium surcharge that is subject to repayment under this section. If the insurer makes the payment under this subsection, the insurer is entitled to repayment of that amount when the association repays it. The insurer:~~

~~(1) may only pay the premium surcharge to pay the amounts owed for the payment of class 2 public security obligations and public security administrative expenses associated with the amount to be repaid under the commissioner's order in subsection (b) of this section;~~

~~(2) must pay the premium surcharges equally for all policyholders of that insurer who are subject to the premium surcharge; and~~

~~(3) must maintain records that track the amount of premium surcharges paid to their policyholders and the amount not paid.]~~

~~**[\$5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers.]**~~

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1 ~~[(a) When providing a repayment to insurers for amounts paid for class 2 premium~~
2 ~~surcharges and member assessments, the association must specify the surcharge and assessment~~
3 ~~period being repaid.]~~

4 ~~[(b) Beginning with the year designated in the commissioner's order described in §5.4126~~
5 ~~of this division (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), not~~
6 ~~later than March 1 of each year, the association must direct payment of the funds held in the~~
7 ~~repayment obligation trust fund to the insurer or insurance group to which the funds are owed for~~
8 ~~repayment of premium surcharges or member assessments.]~~

9 ~~[(c) Within 90 days of receipt of a premium surcharge repayment from the association,~~
10 ~~insurers must repay to the policyholders who made the payments all amounts received from the~~
11 ~~association. Premium surcharge repayments must be proportional to the amount of premium~~
12 ~~surcharge each policyholder paid in the period the association specified in its repayment. To the~~
13 ~~extent that the insurer paid all or any portion of the premium surcharge for its policyholders as~~
14 ~~provided under §5.4127 of this division (relating to Payment of Class 2 Public Securities Issued~~
15 ~~Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the insurer~~
16 ~~may recoup the amount it paid for the period refunded from the association repayment as if the~~
17 ~~insurer were the policyholder to whom the repayment was owed.]~~

18
19 **§5.4133. Public Security Proceeds.**

20 -- NO CHANGE --

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§5.4134. Excess Public Security Proceeds.

(a) The association [~~Association~~] may use any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied in accordance with Insurance Code §2210.608.

(b) As specified in [~~the~~] Insurance Code §§2210.072(a), 2210.073(a), and 2210.0741(a) [~~2210.074(a)~~] public securities may be repaid before their full term if the association's [~~Association's~~] board of directors elects to do so and the commissioner approves.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.

(a) Marketable public securities under this division are public securities that the association in consultation with TPFA determines:

- (1) are consistent with state debt issuance policy requirements; and
- (2) achieve the goals of the association.

(b) In determining the amount of class 1 public securities that can or cannot be issued, the association must consider:

- (1) the association's current premium and net revenue;
- (2) the effect of depopulation under Insurance Code Chapter 2210, Subchapter O on anticipated net premium and other revenue and anticipated revenue from association surcharges;

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(3) the estimated amount of debt service for the public securities, including any contractual coverage amount;

(4) ~~(3)~~ the association's obligations for outstanding ~~class 1~~ public securities, including contractual coverage requirements and public security administrative expenses;

~~(4) the estimated premium surcharge and member assessment repayment obligations;~~

~~(5) the association's outstanding premium surcharge and member assessment repayment obligations;~~

(5) ~~(6)~~ the association's obligations for other financing arrangements;

(6) ~~(7)~~ any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;

(7) ~~(8)~~ TPFA administrative rules;

(8) ~~(9)~~ applicable State of Texas debt issuance policies;

(9) ~~(10)~~ administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and

(10) ~~(11)~~ market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the association has retained for this purpose in determining "market conditions and requirements" under subsection (b) of this section. The association's determination may include consideration of the following factors:

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(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe-related [~~catastrophe-related~~] public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12 months;

(5) news or other publications relating to the association or the issuance of catastrophe-related public securities;

(6) a nationally recognized [~~nationally-recognized~~] investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the association deems necessary and appropriate.

(d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. The [A] cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

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(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and

(C) estimates of the monetary costs, benefits associated with, and the availability of funding alternatives, such as[÷]

~~[(i) purchasing additional reinsurance for similar funding at a similar level;]~~

~~[(ii)]~~ providing financing arrangements, or additional financing arrangements, that provide similar funding and at a similar layer; ~~[or]~~

~~[(iii) other alternative risk transfer arrangements, such as catastrophe bonds, that provide similar funding and at a similar layer;]~~

(2) for public securities requested under this division following a catastrophic event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

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§5.4136. Association Rate Filings.

While there are outstanding ~~[class 1]~~ public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, or outstanding class 1 public securities issued before June 1, 2015, [or there are repayment obligations under §5.4127(b) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments),] the association:

(1) must consider its obligations for the payment of ~~[class 1]~~ public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015 [and the repayment of class 2 public securities], including the additional amount of any debt service coverage that the association determines is required for the issuance of marketable public securities in developing its rates;

(2) must include in a rate filing submitted to the department an analysis that demonstrates that the filed rates produce premium sufficient to provide for at least:

(A) the expected operating costs of the association, including expected nonhurricane wind and hail losses and loss adjustment expenses; and

(B) the expected payment of ~~[class 1]~~ public security obligations payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015 [and the expected repayment of class 2 public securities], including any contractual coverage amount the association determines is required for the issuance of marketable public securities, during the period in which the rates will be in effect; and

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(3) must include a cost component in the rates sufficient to at least provide for the expected payment of public security ~~[class 1 payment]~~ obligations for public securities payable under Insurance Code §§2210.612, 2210.613, or 2210.6131, and class 1 public securities issued before June 1, 2015, ~~[and the expected repayment of premium surcharge and member assessment repayment obligations]~~ during the period in which the rates will be in effect.

§5.4141. Class 1 Public Security Trust Fund ~~[Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund].~~

(a) While class 1 public securities are outstanding, the association must deposit net premium and other revenue in the class 1 public security trust ~~[obligation revenue]~~ fund at periods and in amounts as required by the class 1 public security agreements to fund the class 1 payment obligation. As required by Insurance Code §2210.609(c), the association must deposit association surcharges collected under Insurance Code §§2210.612 in the class 1 public security trust fund.

(b) Without limiting other options, the class 1 public security agreements may include an operating reserve fund. If the class 1 public security ~~[securities]~~ trust ~~[obligation revenue]~~ fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class 1 public securities, or other class 1 public security obligations, the association must transfer sufficient money from any operating reserve fund or other association-held ~~[association held]~~ funds to the class 1 public security trust ~~[obligation revenue]~~ fund to make the payment.

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1 (c) The association may not directly or indirectly use, borrow, or in any manner pledge
2 or encumber association surcharges collected or to be collected, except for the payment of class 1
3 public security obligations and as otherwise authorized in this title.

4 (d) The trust company must deposit any net investment income earned on net premium
5 and other revenue and on the association surcharges into the class 1 public security trust fund
6 while these amounts are on deposit.

7
8 **§5.4142. Class 2 and Class 3 Public Security Trust Funds.**

9 (a) While class 2 or class 3 public securities payable under Insurance Code §2210.613
10 and §2210.6131, respectively, are outstanding, the association must deposit net premium and
11 other revenue in the class 2 public security trust fund and the class 3 public security trust fund,
12 respectively, at periods and in amounts as required by the class 2 and class 3 public security
13 agreements to fund the class 2 and class 3 payment obligations. As required by Insurance Code
14 §2210.609(c), the association must deposit association surcharges collected under Insurance
15 Code §2210.613 and §2210.6131 in the class 2 public security trust fund and the class 3 public
16 security trust fund, respectively.

17 (b) Without limiting other options, for public securities payable under Insurance Code
18 §2210.613 and §2210.6131, the class 2 and class 3 public security agreements may include an
19 operating reserve fund. If the class 2 or class 3 public security trust funds do not contain
20 sufficient money to pay debt service on the class 2 or class 3 public securities, administrative
21 expenses on the class 2 or class 3 public securities, or other class 2 or class 3 public security

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1 obligations, the association must transfer sufficient money from any operative reserve fund or
2 other association-held funds to the class 2 or class 3 public security trust fund, as applicable, to
3 make the payment.

4 (c) The association may not directly or indirectly use, borrow, or in any manner pledge
5 or encumber association surcharges collected or to be collected, except for the payment of the
6 applicable public security obligations and as otherwise authorized in this title.

7 (d) The trust company must deposit any net investment income earned on net premium
8 and other revenue and on the association surcharges into the appropriate trust fund accounts
9 while these amounts are on deposit.

10
11 **~~§5.4142. Excess Obligation Revenue Fund Amounts~~**

12 ~~[(a) Excess revenue collected in the obligation revenue fund that is disbursed to the~~
13 ~~association is an asset of the association and may be used for any purpose authorized in~~
14 ~~Insurance Code §2210.056, including as provided in §5.4127 of this division (relating to~~
15 ~~Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium~~
16 ~~Surcharges and Member Assessments), or deposited in the CRTF.]~~

17 ~~[(b) As specified in Insurance Code §2210.072(a), class 1 public securities may be repaid~~
18 ~~before their full term if the association's board of directors elects to do so and the commissioner~~
19 ~~approves it.]~~

20
21 **§5.4143. Premium Surcharge Trust Fund.**

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1 (a) As required by any agreements between the association, TPFA, and the trust
2 company, if public securities payable under Insurance Code §2210.6132 are outstanding, insurers
3 may be required to deposit contingent surcharges directly into the premium surcharge trust fund.

4 (b) If insurers are required to direct deposit under subsection (a) of this section, then the
5 association must provide notice to the commissioner and insurers no later than 60 days before the
6 insurers must implement the contingent surcharge.

7 (c) The notice under subsection (b) of this section must include all applicable deposit
8 instructions, including any required routing information and account numbers.

9 (d) Insurers must deposit the funds into the appropriate accounts on the date the funds
10 must otherwise be remitted to the association under §5.4186 of this division (relating to
11 Remittance of Contingent Surcharges).

12 (e) If insurers are not required to direct deposit under subsection (a) of this section, then
13 the association must deposit the collected contingent surcharges on receipt into the premium
14 surcharge trust fund or funds.

15 (f) The association may not directly or indirectly use, borrow, or in any manner pledge or
16 encumber contingent surcharges collected or to be collected, by the association except for the
17 payment of the applicable public security obligations and as otherwise authorized in this title.

18 (g) The trust company must deposit any net investment income earned on the contingent
19 surcharges into the appropriate trust fund accounts while these amounts are on deposit.
20
21

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1 ~~§5.4143. Trust Funds for the Payment of Class 2 Public Securities]~~

2 ~~[(a) As required by any agreements between the association, TPFA, and the trust~~
3 ~~company, insurers may be required to deposit premium surcharges and member assessments~~
4 ~~directly into the premium surcharge trust fund and member assessment trust fund, respectively.]~~

5 ~~[(b) If insurers are required to direct deposit under subsection (a) of this section, then the~~
6 ~~association must provide notice to the commissioner and insurers:]~~

7 ~~(1) for premium surcharges, no later than 60 days before the insurers must~~
8 ~~implement the surcharge; and]~~

9 ~~(2) for member assessments, with the notice required under §5.4163 of this~~
10 ~~division (relating to Notice of Assessments).]~~

11 ~~[(c) The notice under subsection (b) of this section must include all applicable deposit~~
12 ~~instructions, including any required routing information and account numbers.]~~

13 ~~[(d) Insurers must deposit the funds into the appropriate accounts on the date the funds~~
14 ~~must otherwise be remitted to the association under §5.4164 of this division (relating to Payment~~
15 ~~of Assessment) and §5.4186 of this division (relating to Remittance of Premium Surcharges).]~~

16 ~~[(e) If insurers are not required to direct deposit under subsection (a) of this section, then~~
17 ~~the association must deposit the collected premium surcharges and association member~~
18 ~~assessments on receipt into the appropriate accounts as required under agreements with TPFA~~
19 ~~and the trust company. The association may not directly or indirectly use, borrow, or in any~~
20 ~~manner pledge or encumber premium surcharges and association member assessments collected,~~

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or to be collected, by the association under Insurance Code ~~§2210.613~~, except for the payment of class 2 public security obligations and as otherwise authorized in this title.]

~~[(f) The trust company must deposit any investment income earned on the premium surcharges or member assessments into the appropriate trust fund accounts while these amounts are on deposit.]~~

§5.4144. Excess [Class 2] Premium Surcharge Revenue.

~~[(a)]~~ Revenue collected in any calendar year from premium surcharges under Insurance Code §§2210.612, 2210.613, 2210.6131, and 2210.6132 ~~[\$2210.613]~~ that exceeds the amount of class 1, class 2, or class 3 public security obligations and class 1, class 2, or class 3 public security administrative expenses payable in that calendar year from premium surcharges and interest earned on the premium surcharge trust fund deposits may, at the discretion of the association, be:

(1) used to pay class 1, class 2, or class 3 public security obligations payable in the following calendar year, respectively, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 1, class 2, or class 3 public securities, respectively; or

(3) deposited in the CRTF.

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~~[(b) As specified in Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.]~~

§5.4145. Excess Net Premium and Other Revenue. Excess net premium and other revenue collected in the class 1, class 2, and class 3 public security trust funds that is disbursed to the association is an asset of the association and may be used for any purpose authorized in Insurance Code §2210.056, or deposited in the CRTF.

~~[§5.4145. Excess Class 2 Member Assessment Revenue].~~

~~[(a) Revenue collected in any calendar year from a member assessment under Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that calendar year from member assessments and interest earned on the member assessment trust fund created for class 2 public securities deposits may, at the discretion of the association, be:~~

~~(1) used to pay class 2 public security obligations payable in the following calendar year, offsetting the amount of the member assessment that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;~~

~~(2) used to redeem or purchase outstanding class 2 public securities; or~~

~~(3) deposited in the CRTF.]~~

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1 ~~[(b) As specified in Insurance Code §2210.073(a), class 2 public securities may be repaid~~
2 ~~before their full term if the association's board of directors elects to do so and the commissioner~~
3 ~~approves it.]~~

4
5 **~~[\$5.4146. Member Assessment Trust Fund for the Payment of Class 3 Public Securities].~~**

6 ~~[(a) As required by any agreement between the association, TPFA, or the trust company,~~
7 ~~insurers may be required to direct deposit member assessments into the member assessment trust~~
8 ~~fund.]~~

9 ~~[(b) If insurers are required to direct deposit under subsection (a) of this section, then the~~
10 ~~association must provide notice of the direct deposit requirement to the commissioner and~~
11 ~~insurers with the notice required under §5.4163 of this division (relating to Notice of~~
12 ~~Assessments).]~~

13 ~~[(c) If insurers are not required to direct deposit under subsection (a) of this section, then~~
14 ~~the association must deposit the collected member assessments on receipt in the member~~
15 ~~assessment trust fund. The deposits must be made as required under agreements with TPFA and~~
16 ~~the trust company.]~~

17 ~~[(d) The trust company must deposit in that member assessment trust fund any~~
18 ~~investment income earned on the member assessments while these amounts are held on deposit~~
19 ~~in the member assessment trust fund. The association may not directly or indirectly use, borrow,~~
20 ~~or in any manner pledge or encumber association member assessments collected, or to be~~

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collected, by the association under Insurance Code §2210.6135, except for the payment of class 3 public security obligations and as otherwise authorized by this title.]

[§5.4147. Excess Class 3 Member Assessment Revenue]

(a) Revenue collected in any calendar year from a member assessment under Insurance Code §2210.6135 that exceeds the amount of class 3 public security obligations and class 3 public security administrative expenses payable in that calendar year from member assessments and interest earned on the member assessment trust fund created for class 3 public securities deposits may, in the discretion of the association, be:

(1) used to pay class 3 public security obligations payable in the following calendar year, offsetting the amount of the member assessments that would otherwise be required to be levied for the year under Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 3 public securities; or

(3) deposited in the CRTF.]

(b) As specified in Insurance Code §2210.074(a), class 3 public securities may be repaid before their full term if the association's board of directors elects to do so and the commissioner approves it.]

[§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed under §5.4127].

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1 ~~[(a) As required by the commissioner's order under §5.4126(d) of this division (relating~~
2 ~~to Alternative for Issuing Class 2 and Class 3 Public Securities), the association must deposit~~
3 ~~funds collected under §5.4127(d)(2) of this division (relating to Payment of Class 2 Public~~
4 ~~Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member~~
5 ~~Assessments) in the repayment obligation trust fund. The association must enter into trust~~
6 ~~agreements with the trust company or with a trustee selected by the association and approved by~~
7 ~~the commissioner. The trust agreements between the association and a trustee other than the trust~~
8 ~~company are subject to prior approval by the commissioner. Any investment income earned on~~
9 ~~funds in the repayment obligation trust fund become repayment obligation trust funds.]~~

10 ~~[(b) The association may not directly or indirectly use, borrow, or in any manner pledge~~
11 ~~or encumber repayment obligation trust funds held by the repayment obligation trust fund trustee~~
12 ~~except as authorized under Insurance Code Chapter 2210 and this division.]~~

13
14 ~~**[§5.4149. Excess Repayment Obligation Trust Fund Amounts.]**~~

15 ~~[Following the payment of all class 2 public securities subject to repayment under §5.4127(b) of~~
16 ~~this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and~~
17 ~~Repayment of Premium Surcharges and Member Assessments) and the repayment of all amounts~~
18 ~~owed under §5.4127(b) of this division, any funds remaining in the repayment obligation trust~~
19 ~~fund must be disbursed to the association as an asset of the association and may be used for any~~
20 ~~purpose authorized in Insurance Code §2210.056.]~~

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§5.4161. Member Assessments.

(a) The association, with the approval of the commissioner, must assess members as provided by Insurance Code Chapter 2210.

(b) The association must provide, in the aggregate for the catastrophe year, the following information when requesting the commissioner to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, and 2210.0742, as applicable:

(1) the association's best estimate of the amount of losses expected to be paid as a result of the event, or series of events, that caused the need for the assessment requested;

(2) the amount of losses paid, or expected to be paid, from premium and other revenue of the association;

(3) the amount of losses paid, or expected to be paid, from available reserves of the association and available amounts in the catastrophe reserve trust fund;

(4) the amount of losses paid, or expected to be paid, from the proceeds of class 1 public securities issued, or expected to be issued;

(5) the amount of class 1 assessments previously approved and the amount of class 1 assessments now requested;

(6) in the case of a request to approve a class 2 or class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 2 public securities issued, or expected to be issued;

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1 (7) in the case of a request to approve a class 2 or class 3 assessment, the amount
2 of class 2 assessments previously approved and the amount of class 2 assessments now
3 requested;

4 (8) in the case of a request to approve a class 3 assessment, the amount of losses
5 paid, or expected to be paid, from the proceeds of class 3 public securities issued, or expected to
6 be issued;

7 (9) in the case of a request to approve a class 3 assessment, the amount of class 3
8 assessments previously approved and the amount of class 3 assessments now requested.

9 (c) If all or any portion of the authorized principal amount of class 1 public securities
10 requested under §5.4124 or §5.4125 of this division (relating to Issuance of Class 1 Public
11 Securities Before a Catastrophic Event or Issuance of Public Securities After a Catastrophic
12 Event, respectively) cannot be issued based on the factors described in §5.4135 of this division
13 (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be
14 Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the association may
15 request and the commissioner may approve the imposition of class 1 and class 2 assessments as
16 provided in this section.

17 (d) In its request to the commissioner to approve the imposition of assessments under
18 subsection (c) of this section, the association must submit the following information:

19 (1) the information required by subsection (b) of this section;

20 (2) information based on the analyses described in §5.4135 of this division;

21 (3) the amount of class 1 public securities that can be issued;

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1 (4) the amount of class 1 public securities that cannot be issued; and

2 (5) the specific reasons, market conditions, and requirements that prevent TPFA
3 from issuing all or any portion of the authorized principal amount of class 1 public securities.

4 The association may rely on information and advice provided by TPFA, TPFA consultants,
5 TPFA legal counsel, and third parties retained by the association for this purpose.

6 (f) The association must request the issuance of the statutorily authorized principal
7 amount of class 1 public securities before the association may request the commissioner approve
8 a class 1 assessment under Insurance Code §2210.0725;

9 (g) The association must request the issuance of the statutorily authorized principal
10 amount of class 2 public securities before the association may request the commissioner approve
11 a class 2 assessment under Insurance Code §2210.074;

12 (h) The association must request the issuance of the statutorily authorized principal
13 amount of class 3 public securities before the association may request the commissioner approve
14 a class 3 assessment under Insurance Code §2210.0742.

15 ~~[(a) The Association shall determine if a member assessment is necessary to fund the~~
16 ~~Association's outstanding class 2 and class 3 public security obligations, including any required~~
17 ~~contractual coverage amount (required obligations) based upon the evaluation of information that~~
18 ~~is provided to the Association by the Texas Public Finance Authority.~~

19 ~~[(b) Pursuant to Insurance Code Chapter 2210 and the Association's plan of operation, if~~
20 ~~the Association determines that a member assessment is required to fulfill the Association's~~
21 ~~required obligations the Association shall assess the members of the Association in an amount~~

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1 ~~the Association determines to be reasonable and necessary to fully provide for the Association's~~
2 ~~required obligations.]~~

3 (i) [~~ce~~] This section and §§5.4162 - 5.4167 of this division (relating to Amount of
4 Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest
5 After [~~after~~] Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency,
6 respectively) are a part of the association's [~~Texas Windstorm Insurance Association's~~] plan of
7 operation and will [~~shall~~] control over any conflicting provision in §5.4001 of this subchapter
8 (relating to Plan of Operation).

9
10 **§5.4162. Amount of Assessment.**

11 -- NO CHANGE --

12
13 **§5.4163. Notice of Assessment.**

14 -- NO CHANGE --

15
16 **§5.4164. Payment of Assessment.**

17 -- NO CHANGE --

18
19 **§5.4165. Failure to Pay Assessment.**

20 -- NO CHANGE --

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§5.4166. Contest After Payment of Assessment.

-- NO CHANGE --

§5.4167. Inability to Pay Assessment by Reason of Insolvency.

-- NO CHANGE --

§5.4171. Premium Surcharge Requirements [~~Requirement~~].

(a) Following a catastrophic event, the association may be required to assess a premium surcharge under Insurance Code §§2210.612, 2210.613, or 2210.6131 on all policyholders of policies that cover association-insured property.

(b) Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.6132 [~~§2210.613(b) and (c)~~] on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association (TAIPA) policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(c) For premium surcharges described in subsection (a), this section and §§5.4172, 5.4173, 5.4181, 5.4182, 5.4184 - 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges,

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(d) [(b)] For contingent surcharges described in subsection (b), this [This] section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division [(relating to Premium Surcharge Definitions, Determination of the Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of the Surcharges, Mandatory Premium Surcharge Collection, Remittance of Premium Surcharges, Offsets, Surcharges Not Subject to Commissions or Premium Taxes, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively)] only apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)), other private passenger automobile liability, private passenger automobile physical damage; commercial automobile no fault (PIP), other commercial automobile liability, and commercial automobile physical damage.

(e) [(e)] This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911;

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(2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

~~[(d) For all lines of insurance subject to this division, this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division are effective June 1, 2011.]~~

§5.4172. Premium Surcharge Definitions.

The following words and terms when used in §§5.4171, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirements [~~Requirement~~], Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium [~~the~~] Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent [~~Premium~~] Surcharges, Offsets,

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Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges
not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report,
Premium Surcharge Reconciliation Report, and Data Collection, respectively) will have the
following meanings unless the context clearly indicates otherwise:

(1) Affiliated insurer--An insurer that is an affiliate, as described by Insurance
Code §823.003, of an insurer authorized to engage in the business of property or casualty
insurance in the State of Texas. Affiliated insurer includes an insurer not authorized to engage in
the business of property or casualty insurance in the State of Texas.

(2) Affiliated surplus lines insurer--An eligible surplus lines insurer that is an
affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the
business of property or casualty insurance in the State of Texas.

(3) Association-insured property--Real property, or tangible or intangible
personal property covered under an insurance policy issued by the Texas Windstorm Insurance
Association.

(4) Contingent surcharge percentage--The percentage amount set by the
commissioner under §5.4173(c) of this division.

(5) Exposure--The basic unit of risk that is used by an insurer to determine the
insured's premium.

~~[(4) Insured property--Real property, or tangible or intangible personal property~~
~~including automobiles, covered under an insurance policy issued by an insurer. Insured property~~

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~~includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.]~~

(6) ~~[(5)]~~ Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the association, and the FAIR Plan. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

~~[(6) Premium surcharge percentage--The percentage amount determined by the commissioner under §5.4173 of this division.]~~

(7) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Contingent Surcharge Percentage.

(a) ~~[The association must review information provided by TPFA concerning the amount of the class 2 public security obligations and estimated amount of the class 2 public security administrative expenses, including any required contractual coverage amount, to determine whether the association has sufficient available funds to pay the public security obligations and public security administrative expenses, if any, including any contractual coverage amount, or~~

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whether a premium surcharge under Insurance Code §2210.613 is required. The association may consider all of the association's outstanding obligations and sources of funds to pay those obligations.]

[~~(b)~~] If the commissioner orders public securities to be paid under Insurance Code §2210.6132 [~~association determines that it is unable to satisfy the estimated amount of class 2 public security obligations and administrative expenses with available funds~~], the association must submit a written request to the commissioner to approve a contingent [~~premium~~] surcharge on policyholders with insured property in the catastrophe area as authorized under Insurance Code §2210.6132 [~~§2210.613~~]. The association's request must specify, for each applicable class of public securities:

(1) the total amount of the class 2 and class 3 public security obligations and estimated amount of the class 2 and class 3 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice;

~~[(2) the amount to be collected from insurers through a member assessment, which may not exceed 30 percent of the amount specified in the TPFA notice;]~~

~~[(3) the amount to be collected from catastrophe area policyholders through premium surcharges, which may not exceed 70 percent of] the amount specified in the TPFA notice;]~~ and

(2) [~~(4)~~] the date on which the contingent [~~premium~~] surcharge is to commence and the date the contingent [~~premium~~] surcharge for the noticed amount is to end.

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(b) While public securities repayable under Insurance Code §2210.6132 are outstanding, the association must submit a written request described under subsection (a) of this section on an annual basis. The commissioner must receive a request described by this subsection no later than 195 days before the date the association requests the contingent surcharge to commence.

(c) On approval by the commissioner, each insurer must assess a contingent ~~[premium]~~ surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The contingent ~~[premium]~~ surcharge percentage must be applied to the premium attributable to insured property located in the catastrophe area on policies that become effective, or on multiyear policies that become effective or have an anniversary date, during the premium surcharge period when the contingent ~~[premium]~~ surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium ~~[the]~~ Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent ~~[Premium]~~ Surcharges, Offsets, and Association Surcharges not Subject to Commissions or Premium Taxes, and Contingent Surcharges not Subject to Commissions, respectively). The premium surcharge date specified by the commissioner must be at least 180 days after the date the commissioner issues the order under Insurance Code §2210.6132(b) ~~[notice of approval of the public securities]~~.

(d) This section is part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

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§5.4181. Premiums to be Surcharged.

(a) The association [premium] surcharge percentage and the contingent surcharge percentage must be applied to:

(1) amounts reported as premium for the purposes of reporting under the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas;

(2) if not reported as described in paragraph (1) of this subsection, those additional amounts collected by insurers that are subject to premium taxation by the comptroller, including policy fees not reported as premium; and

(3) premium subject to surplus lines premium tax, and premium subject to independently procured premium tax.

(b) Premium surcharges do not apply to fees that are neither reported as premium in the Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Texas, nor subject to premium taxation by the comptroller.

§5.4182. Method for Determining the Premium Surcharges.

(a) The methods addressed in this section relating to contingent surcharges will apply to all:

(1) policies written and reported under the following annual statement lines of business: fire; allied lines; farm and ranch owners; homeowners; commercial multiple peril (nonliability portion); private passenger auto no fault (personal injury protection (PIP)), other

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private passenger auto liability, and private passenger auto physical damage; and commercial auto no fault (PIP), other commercial auto liability, and commercial auto physical damage; and

(2) personal and commercial risks assigned by TAIPA under Insurance Code Chapter 2151.

(b) The methods addressed in this section relating to association surcharges will apply to all association policies.

(c) The association [~~premium~~] surcharge will be determined by applying the association [~~premium~~] surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to association-insured property located in the catastrophe area.

(d) The contingent surcharge will be determined by applying the contingent surcharge percentage to the policy premium determined in §5.4181 of this division (relating to Premiums to be Surcharged), attributable to insured property located in the catastrophe area, including automobiles principally garaged in the catastrophe area.

(e) [~~e~~] In cases where the policy is composite rated and the premium attributable to insured property located in the catastrophe area cannot be reasonably determined, the insurer must determine the contingent [~~premium~~] surcharge based on the insured address. If the insured address is within a designated catastrophe area, then the insurer must determine the contingent [~~premium~~] surcharge by applying the contingent [~~premium~~] surcharge percentage to the full policy premium determined in §5.4181 of this division. If the insured address is not within a designated catastrophe area, then no premium surcharge applies to the policy.

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§5.4184. Application of Premium ~~the~~ Surcharges.

(a) When assessed under Insurance Code §2210.6132 [~~§2210.613~~], the contingent [~~premium~~] surcharges must apply to all policies with insured property in the catastrophe area that are issued or renewed with effective dates in the surcharge [~~assessment~~] period specified in the commissioner's order.

(b) For association policies that meet the requirements of §5.49112 of Division 10 of this subchapter (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131), association surcharges must apply to all association policies that are in effect on the surcharge date. For association policies that do not yet meet the requirements of §5.49112 of Division 10 of this subchapter, association surcharges must apply to all association policies that are issued or renewed with effective dates in the surcharge period determined under §5.4126 of this division (relating to Determination of the Association Surcharge Percentage).

(c) There are [~~with~~] two exceptions to the requirements of subsections (a) and (b) of this section:

(1) insurers must not surcharge policies, and are not responsible for collecting premium surcharges on policies, that did not go into effect or were canceled as of the inception date of the policy; and

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(2) for multiyear policies, the premium surcharge in effect on the effective date of the policy, or the anniversary date of the policy, must be applied to the 12-month premium for the applicable policy period.

(d) ~~[(b)]~~ Premium surcharges collected ~~[are refundable]~~ under Insurance Code §2210.6132 ~~[\$2210.613]~~ are refundable.

(1) If the policy is canceled, an amount of the contingent surcharge that is proportionate to the returned premium must be refunded to the policyholder; however,

(2) instead of a refund of the contingent ~~[premium]~~ surcharge, the insurer may credit the return contingent ~~[premium]~~ surcharge against amounts due the insurer but unpaid by the policyholder; and

(3) an additional contingent surcharge will not apply to a policy that was canceled after the effective date of the policy, and is later reinstated, if the contingent ~~[premium]~~ surcharge was paid in full. If the policyholder did not pay the contingent ~~[premium]~~ surcharge in full, the policyholder must pay the contingent ~~[premium]~~ surcharge that is due but unpaid before the insurer may reinstate the policy. For purposes of this section a policy is reinstated if it covers the same period as the original policy without a lapse in coverage, except as provided in Insurance Code §551.106.

(e) ~~[(e)]~~ If a midterm policy change increases the premium on the policy, the policyholder must pay an additional contingent surcharge for the increased premium attributable to insured property located in the catastrophe area, which will be determined by applying the

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1 applicable contingent [~~premium~~] surcharge percentage to that portion of the additional premium
2 attributable to insured property located in the catastrophe area.

3 (f) [~~(d)~~] If a midterm policy change decreases the premium, the policyholder is due a
4 refund of the contingent surcharge for the decreased premium attributable to insured property
5 located in the catastrophe area, which must be determined by applying the applicable contingent
6 [~~premium~~] surcharge percentage to that portion of the return premium attributable to insured
7 property located in the catastrophe area. The insurer must credit or refund the excess contingent
8 surcharge to the policyholder within 20 days of the date of the transaction, except as provided by
9 subsection (g) of this section. The insurer, or surplus lines agent allowed by an affiliated surplus
10 lines insurer to credit or refund excess surcharges, may credit any refund paid or credited to the
11 policyholder to the association through the offset process described in §5.4187 of this division
12 (relating to Offsets).

13 (g) [~~(e)~~] Surcharges or refunds must apply to all premium changes resulting from
14 exposure or premium audits, retrospective rating adjustments, or other similar adjustments that
15 occur after policy expiration. On inception of the policy, the contingent [~~premium~~] surcharge
16 must be collected on the deposit premium paid. If, after exposure or premium audit,
17 retrospective rating adjustment, or similar adjustment after policy expiration, an additional
18 premium is required, an additional contingent surcharge must be paid. If, after exposure or
19 premium audit, retrospective rating adjustment, or other similar adjustment after policy
20 expiration, the deposit premium exceeds the actual premium, the excess contingent surcharge
21 must be refunded to the policyholder, and the insurer, or surplus lines agent allowed by an

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1 affiliated surplus lines insurer to credit or refund excess surcharges, may credit any refund paid
2 to the association through the offset process described in §5.4187 of this division. Additional
3 contingent surcharges and refunds must be determined by applying the contingent [~~premium~~]
4 surcharge percentage in effect on the inception date of the policy, or the anniversary date of the
5 policy in the case of multiyear policies, to the additional premium (or return premium)
6 attributable to insured property located in the catastrophe area.

7 (h) [~~(f)~~] Even if a contingent surcharge was in effect on the inception date of the policy,
8 or the anniversary date in the case of multiyear policies, no additional contingent [~~premium~~]
9 surcharges or refunds will apply to premium changes resulting from exposure or premium audits,
10 retrospective rating adjustments, or other similar adjustments that occur when there is no
11 contingent [~~premium~~] surcharge in effect.

12 (i) [~~(g)~~] An affiliated surplus lines insurer may allow a surplus lines agent to credit or
13 refund contingent [~~premium~~] surcharges on its behalf. An affiliated surplus lines insurer, or
14 surplus lines agent allowed to credit or refund contingent [~~premium~~] surcharges on its behalf,
15 must credit or refund the excess surcharge to the policyholder under subsections (d) and (e) of
16 this section not later than the last day of the month following the month in which the
17 corresponding transaction was effective.

18 (j) [~~(h)~~] An affiliated surplus lines insurer that allows an agent to credit or refund
19 contingent [~~premium~~] surcharges on its behalf under subsection (g) of this section may be held
20 liable by the department for the failure of its agent to comply with this section.

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§5.4185. Mandatory Premium Surcharge Collection.

(a) ~~[Except as provided in §5.4127(h) of this division (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), insurers]~~ Insurers may not pay the surcharges instead of surcharging their policyholders. However, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers must collect the contingent ~~[premium]~~ surcharges proportionately as the insurer collects the premium.

(c) The association must collect the association surcharge in full when due for policies compliant with §5.49112 (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131) of Division 10 of this subchapter. For policies not yet compliant with §5.49112, the association must collect association surcharges in full no later than the effective date of the policy.

(d) Under Insurance Code §§2210.612(d), 2210.613(d), and 2210.6131(d) ~~[§2210.613(d)]~~, the failure of a policyholder to pay the association ~~[premium]~~ surcharge constitutes failure to pay premium for the purposes of policy cancellation.

(e) Insurers must apply all policyholder payments received to contingent surcharges before applying payments to premium.

§5.4186. Remittance of Contingent ~~[Premium]~~ Surcharges.

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(a) Except as provided in §5.4143 of this division (relating to Premium Surcharge Trust Funds [~~Trust Funds for the Payment of Class 2 Public Securities~~]), insurers must remit to the association the aggregate amount of contingent surcharges as provided by this section. An affiliated surplus lines insurer may allow a surplus lines agent to remit contingent [~~premium~~] surcharges to the association on its behalf in compliance with any procedures established by the association relating to contingent [~~premium~~] surcharge remissions from surplus lines agents.

(b) Insurers, or surplus lines agents allowed by affiliated surplus lines insurers to remit contingent surcharges under subsection (a) of this section, must remit all surcharges not later than the last day of the month following the month in which the corresponding written premium transaction was effective.

(c) Insurers and agents may not allow or require policyholders to make separate payments for the surcharge amounts that are payable to the association or the premium surcharge trust fund or funds.

(d) Subsection (b) of this section applies to all insurers regardless of whether the policyholder paid the contingent [~~premium~~] surcharge through an agent of the insurer or the policyholder paid the contingent [~~premium~~] surcharge directly to the insurer.

(e) An affiliated surplus lines insurer that allows an agent to remit contingent [~~premium~~] surcharges to the association under subsection (a) of this section may be held liable by the department for the failure of its agent to remit the contingent [~~premium~~] surcharges or timely remit the contingent [~~premium~~] surcharges, under subsection (b) of this section.

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§5.4187. Offsets.

(a) An insurer may credit a contingent [~~premium~~] surcharge amount on its next remission to the association if the insurer has already remitted the amount to the association for:

(1) the portion of the surcharge the insurer was not able to collect from the policyholder, if the policy was canceled or expired;

(2) the portion of the surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, that was later refunded to the policyholder as a result of a midterm cancellation or midterm policy change, as described in §5.4184 of this division (relating to Application of Premium [~~the~~] Surcharges); or

(3) the portion of a surcharge remitted to the association, or deposited directly in the premium surcharge trust fund or funds, in excess of a deposit premium as described in §5.4184 of this division.

(b) An agent may not offset payment of a contingent [~~premium~~] surcharge or an association surcharge to the insurer for any reason. However, a surplus lines agent allowed by an affiliated surplus lines insurer to remit contingent surcharges to the association on its behalf under §5.4186(a) of this division (relating to Remittance of Contingent [~~Premium~~] Surcharges), may offset as provided in this section.

§5.4188. Association Surcharges not Subject to Commissions or Premium Taxes;
Contingent Surcharges Not Subject to Commissions.

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1 (a) As provided by ~~the~~ Insurance Code §§2210.612(d), 2210.613(d) and 2210.6131(d)
2 [~~§2210.613(d)~~], association ~~[premium]~~ surcharges are not subject to either premium taxes or
3 agents' commissions.

4 (b) The association may not increase association surcharges for premium taxes or
5 commissions, and agents may not collect or charge commissions for association surcharges.

6 (c) Insurers may not increase contingent ~~[the premium]~~ surcharges for ~~[premium taxes~~
7 ~~or]~~ commissions, and agents, including a surplus lines agent, may not collect or charge
8 commissions for contingent ~~[the premium]~~ surcharges.

9 (d) Insurers may increase contingent surcharges in an amount equal to any premium or
10 maintenance tax attributable to the contingent surcharge and owed to the comptroller.

11
12 **§5.4189. Notification Requirements.**

13 (a) Insurers must provide written notice to policyholders receiving a contingent
14 ~~[premium]~~ surcharge that their policy contains a surcharge and the dollar amount of the
15 surcharge. The notice must read: "Texas Insurance Code Section 2210.6132 authorizes
16 ~~[Sections 2210.073 and 2210.613 require]~~ a premium surcharge to be added to certain property
17 and casualty insurance policies providing coverage in the catastrophe area to pay the debt service
18 on public securities issued to pay Texas Windstorm Insurance Association claims resulting from
19 a catastrophic event. A premium surcharge {in the amount of \$_____} has been added to your
20 premium. Should your policy be canceled by you or the insurer prior to its expiration date, a

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1 proportionate amount of the premium surcharge will be refunded to you. ~~[Failure to pay the~~
2 ~~surcharge is grounds for cancellation of your policy.]”~~

3 (b) The association must provide written notice to policyholders receiving an association
4 surcharge that their policy contains a surcharge and the dollar amount of the surcharge. The
5 notice must read: “Texas Insurance Code Sections 2210.612, 2210.613, and 2210.6131 require a
6 premium surcharge be added to Texas Windstorm Insurance Association policies to pay the debt
7 service on public securities issued to pay association claims resulting from a catastrophic event.
8 A premium surcharge { in the amount of \$ _____ } has been added to your premium. Should your
9 policy be canceled by you or the association prior to its expiration date, the premium surcharge
10 will not be refunded to you. Failure to pay the surcharge is grounds for cancellation of your
11 policy.” ~~[Insurers must provide written notice to policyholders of the dollar amount of the~~
12 ~~premium surcharge.]~~

13 (c) Except as provided in subsection (e) ~~[(d)]~~ of this section, notices required under
14 subsection [subsections] (a) [and (b)] of this section must:

15 (1) be provided at the time the policy is issued, in the case of new business;
16 (2) be provided with the renewal notice, in the case of renewal business;
17 (3) be provided within 20 days of the date of the transaction for any midterm
18 change in the premium surcharge; and

19 (4) use at least 12-point font and either be contained on a separate page or shown
20 in a conspicuous location on the declarations page.

21 (d) Notices required under subsection (b) of this section must:

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(1) be provided to policyholders whose policies comply with §5.49112(a) of Division 10 of this subchapter as of the date in §5.4126(b)(7) of this division no later than 14 days after that date;

(2) be provided with the renewal notice to policyholders whose policies will renew during the period described by paragraphs (8) and (9) of §5.4126(b);

(3) be provided at the time a new policy is issued, for new policies that go into effect during the period described by paragraphs (8) and (9) of §5.4126(b), and;

(4) use at least 12-point font and either be contained on a separate page or shown in a conspicuous location on the declarations page.

(e) An affiliated surplus lines insurer, or surplus lines agent allowed to provide notices on its behalf, must provide the notice required under subsection (c)(3) of this section to the policyholder not later than the last day of the month following the month in which the transaction for any midterm change in the premium surcharge became effective.

~~(f)~~ [(e)] An affiliated surplus lines insurer that allows an agent to provide notices required under this section may be held liable by the department for the failure of its agent to comply with this section.

§5.4190. Annual Premium Surcharge Report.

(a) This section applies to an insurer that, during the calendar year, wrote any of the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger

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1 automobile no fault (personal injury protection (PIP)); other private passenger automobile
2 liability, private passenger automobile physical damage; commercial automobile no fault (PIP),
3 other commercial automobile liability, or commercial automobile physical damage.

4 (b) No later than 90 days following the end of a calendar year in which an association
5 surchARGE was in effect, the association must provide the department with an annual premium
6 surchARGE report for the calendar year.

7 (c) No later than 90 days following the end of a calendar year in which a contingent
8 [~~premium~~] surcharge was in effect, each insurer must provide the association with an annual
9 premium surcharge report for the calendar year unless contingent [~~premium~~] surcharges were in
10 effect for less than 45 days within the calendar year.

11 (d) [~~(e)~~] Annual premium surcharge reports must provide information for each insurance
12 company writing property or casualty insurance in the State of Texas, including affiliated surplus
13 lines insurers, and affiliated insurers not authorized to engage in the business of insurance that
14 issued independently procured insurance policies covering insured property in the State of Texas.

15 (e) [~~(d)~~] Annual premium surcharge reports must provide information for the following
16 annual statement lines of business: fire; allied lines; farmowners multiple peril; homeowners
17 multiple peril; commercial multiple peril (nonliability portion); private passenger automobile no
18 fault (PIP); other private passenger automobile liability; private passenger automobile physical
19 damage; commercial automobile no fault (PIP); other commercial automobile liability; or
20 commercial automobile physical damage for which the insurer reported premium for the
21 applicable calendar year.

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1 (f) ~~(e)~~ Annual premium surcharge reports must provide the following information:

2 (1) the name and contact information of the individual responsible for submitting
3 the report;

4 (2) the five-digit NAIC number of the insurance company;

5 (3) the name of the insurance company;

6 (4) for policies with effective dates, or multiyear policies with anniversary dates,
7 within the calendar year, separately for each surcharge period in effect during the calendar year,
8 and within each surcharge period in effect during the calendar year for all applicable lines of
9 business:

10 (A) for all policies subject to a premium surcharge:

11 (i) the total written premium attributable to insured property
12 located in the catastrophe area; and

13 (ii) the total written premium attributable to insured property
14 located outside the catastrophe area; and

15 (B) the total written premium for policies not subject to a premium
16 surcharge because the policyholder had no insured property located in the catastrophe area;

17 (5) for policies effective in portions of the calendar year when no surcharge
18 period was in effect, or in the case of multiyear policies with an anniversary date in portions of
19 the calendar year when no surcharge was in effect, the total written premium;

20 (6) the total amount of premium surcharges collected during the applicable
21 calendar year; and

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(7) the total amount of premium surcharges remitted to the association during the applicable calendar year.

(g) ~~[(f)]~~ The association must:

(1) review the reports submitted to it under this section as necessary to determine:

(A) the consistency of contingent ~~[premium]~~ surcharges actually remitted to the association or deposited directly into the premium surcharge trust fund or funds, with contingent ~~[premium]~~ surcharges shown in the reports as collected and the contingent ~~[premium]~~ surcharges shown in the reports as remitted to the association or deposited directly into the premium surcharge trust fund or funds; and

(B) the consistency of premiums shown in the reports as attributable to the catastrophe area with contingent ~~[premium]~~ surcharges shown in the reports as collected by the insurer, given the requirements regarding the determination of contingent ~~[premium]~~ surcharges in this division;

(2) inform the department of any insurer the association believes may not be in compliance with the rules established under this division; and

(3) before July 1 on each year reports are required to be submitted to the association, provide an aggregate summary of the reports to the department.

§5.4191. Premium Surcharge Reconciliation Report.

-- NO CHANGE --

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1 **§5.4192. Data Collection.**

2 -- NO CHANGE --

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§5.49112. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131.

(a) Not later than the 15th day after the effective date of this section, the association must file with the department policy forms that provide:

(1) the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 (relating to Determination of the Association Surcharge Percentage) of Division 3 of this subchapter, and;

(2) the policyholder has 120 days from the date the policyholder receives the notice described in §5.4189(b) (relating to Notification Requirements) of Division 3 of this subchapter to pay the surcharge.

(b) The association must issue only policies that comply with subsection (a) not later than 60 days after the department approves the policy forms filed under subsection (a).